STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY	**)**	
d/b/a Ameren Illinois,	**)**	
Petitioner	**)**	
	)	**Docket No. 12-0244**
Smart Grid Advanced Metering	**)**	**On Rehearing**
Infrastructure Deployment Plan	**)**	

REPLY BRIEF OF THE

PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

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Table of Contents

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AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Smart Grid Advanced Metering Infrastructure Deployment Plan	))))))	 Docket No. 12-0244 On Rehearing

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("the People" or the "AG"), pursuant to Part 200.800 of the Rules of Practice of the Illinois Commerce Commission ("the Commission"), 83 Ill.Admin.Code Part 200.800 and the schedule established by the Administrative Law Judge, hereby file their Reply Brief in the above-captioned proceeding.

I. INTRODUCTION

In its Initial Brief, Ameren Illinois Company ("Ameren" or "The Company") attempts to thwart the Commission's consideration of important, statutorily-mandated, issues raised by the People and other Intervenors on the dubious projections of societal and customer benefits Ameren relies upon in order to achieve a cost beneficial Plan. Ameren also repeatedly attempts to defend its selection of a discount rate drastically lower than rates employed in other jurisdictions, suggested by this Commission in the ComEd AMI proceedings, and recommended by the federal government. Absent Ameren's grossly overstated customer and societal benefits and its inexcusably low discount rate, its Plan is not cost-beneficial. The People urge the

Commission to look past the rhetoric of Ameren's brief and reject its proposed Plan as not cost beneficial.

Finally, should the Commission take the leap of faith Ameren proposes and approve the Plan, it should and must modify the Plan in two important ways. First, the Commission should direct Ameren to include a premise visit and in-person customer notification at the time of disconnections for nonpayment in any AMI Plan approved by the Commission as required under the current Part 280.130(d). This directive should include the requirement that Ameren continue its current disconnection procedures, which include an attempt at customer contact (a knock on the door) at the time of disconnection for nonpayment. Second, the Commission should require Ameren's Plan to include additional metrics that would ensure that, in particular, vulnerable populations are not harmed by the deployment of AMI and that alleged benefits associated with the Plan are, in fact, realized.

II. THE RECORD EVIDENCE DOES NOT SUPPORT AMEREN'S ASSERTIONS THAT ITS PLAN IS COST BENEFICIAL.

Ameren's Initial Brief is rife with rhetoric seeking to downplay the importance of running multiple scenarios in order to assess whether its Plan is cost-beneficial, even baldly asserting that its Plan is cost beneficial even if a discount rate as high as 14% is used. AIC Initial Brief at 10, 13. However, the Commission should look at the complete picture, beyond the limited snapshot that Ameren is seeking to paint in its brief. Upon further analysis, Ameren's Initial Brief merely demonstrates how potentially unsustainable this Plan is: Ameren insists that its Plan is cost-beneficial despite relying solely on one test to demonstrate its findings; it insists that its selection of a low discount rate is appropriate; and it insists on downplaying the importance of customer and societal benefits despite their being statutorily mandated. The

People urge the Commission to reject Ameren's Plan for the reasons stated below and in the People's Initial Brief.

a. **Ameren Ignored Directives to Provide More than One Scenario for the Commission and Other Stakeholders to Review**

Ameren attempts to argue that the People's analysis was faulty because the People did not review the Plan under the same test as Ameren had hand-selected. In fact, Ameren goes so far as to claim that the People ignored statutory requirements in preparing its analysis claiming that "to reach a negative NPV, Mr. Hornby has to … ignore the Statutory requirement to evaluate the Plan from a societal perspective by using a "Total Resource Cost" with a discount rate as high as 8.8%." AIC Initial Brief at 13. Ameren also contends that the Commission does not have the discretion to reject a Plan presented as cost-beneficial. *Id.* at 7. However, as argued in the People's Initial Brief, under the recommendations of the Illinois State Smart Grid Collaborative (ISSGC), Ameren should have provided the Commission (and other stakeholders) with up to five different benefit-cost calculations from five different perspectives, i.e., participant, ratepayer impact, program administrator, total resource and societal, in order to properly assess the merits of the hundreds of millions of dollars in smart grid investment that Ameren is asking the ratepayers to shoulder. AG Initial Brief at 3-4. Despite this guidance, Ameren presented only a scenario using the Total Resource Cost test. The Commission assuredly has the discretion to review the underlying assumptions that form the bases of Ameren's Plan, as well as question Ameren's choice to present only one scenario as the appropriate scenario. To add insult to injury, Ameren now argues that consideration of other tests or analyses performed under different tests, such as the Total Resources Cost Test performed by

Mr. Hornby, [1] should be given no weight by the Commission, because they are "extreme," "unreasonable," and based on "fanciful" assumptions. AIC Initial Brief at 13. As argued in greater detail in the Initial Brief, the People's analyses are based on reasonable assumptions and culminate in the conclusion that Ameren's projected benefits are overstated and its Plan is not cost-beneficial. In reaching this conclusion, the People assumed a more generally accepted discount rate, higher than the excessively low rate chosen by Ameren (AG Initial Brief at 19); and removed questionable benefits, primarily those related to demand response ("DR"), Plug-In Electric Vehicles ("PEV"), and other benefits that are far too speculative (AG Initial Brief at 8-18).

b. **Ameren's Low Discount Rate Flies in the Face of Acceptable Practice.**

Ameren misstates the People's position when it proclaims that "no party disputes that the Plan is cost-beneficial, if projected customer/societal benefits are included and a customer/societal discount rate is used." AIC Initial Brief at 8, 10. As argued in our Initial Brief, the record evidence presented by the People is quite to the contrary. As it relates to the discount rate, the People noted that "the discount rate that Ameren used to calculate its Base Case results is a matter of debate and subject to interpretation" and acknowledged that "[a]ppropriate discount rates are not explicitly defined in any provision of the Act." AG Initial Brief at 19. What is certain, however, is that Ameren's selection of a low 3.62% discount rate flies in the face of other jurisdictions, guidance from federal authorities, and raises the same concerns that this Commission expressed in the review of ComEd's AMI Plan.

As noted in the People's Initial Brief, Ameren's choice of a discount rate has a major impact on whether the AMI Plan under the Base Case will be, or will not be, cost-beneficial. AG Initial Brief at 19. Simply by selecting a discount rate more in line with those suggested in other

[1] Mr. Hornby also conducted a Societal Costs Test. AG Ex. 1.0RH at 28.

jurisdictions (AG Ex. 1.8RH), Ameren's base case Plan dramatically drops below the threshold at which it is cost-beneficial under both Mr. Hornby's and Staff's calculations. AG Initial Brief at 19; AIC Ex. 8.2RH. The selection of a higher discount rate is also not a whim, as Ameren would seem to suggest. Rather, as argued in the People's Initial Brief, seven other states that have engaged in AMI/smart grid plan approval proceedings have approved discount rates at least double what Ameren used in its base case. AG Initial Brief at 19. Accordingly, Ameren's selection of an unusually low 3.62% discount rate, half the rate used in other jurisdictions, skews the results of its cost/benefit analysis, rendering it unreliable. Despite Ameren's arm-waving that the People's discount rate was unnecessarily high (see AIC Initial Brief at 13), Mr. Hornby applied a generally accepted discount rate of 8.8% based upon guidance from a U.S. Government Office of Management and Budget (OMB) publication[2] plus a 1.8% inflation rate.[3] AG Initial Brief at 20; AG Exhibit 4.0RH at 27. Moreover, the People's discount rate is consistent with Ameren's weighted average cost of capital of 8.25% (AIC Ex. 12.0RH at 6-7) and Ameren chose a discount rate that will "improve the cost-effectiveness" of the Plan (*Id.* at 8). The record evidence, particularly, the testimony of AG witness Rick Hornby, supports rejection of Ameren's discount rate.

As argued in the Initial Brief, Ameren investors are not bearing the financial risk associated with the AMI Plan – Ameren's ratepayers are bearing those risks. This was particularly troubling to the Commission in its review of ComEd's AMI Plan in ICC Docket 12-0298, where it rejected ComEd's use of a 3.087% discount rate, noting that:

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[2] Circular No. A-94 titled "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs"; Section 8 b (1) of the OMB circular states that public investments and regulations displace private investment and consumption, and should be analyzed '…using a real discount rate of 7 percent, the marginal pretax rate of return of an average investment in the private sector."

[3] An OMB memo dated January 3, 2012 indicates a forecast rate of inflation of approximately 1.8 percent over 20 years. This is the forecast 20-year nominal interest rate of 3.5% minus the forecast 20-year real interest rate of 1.7%.

> …it is not the government funding this project, nor reaping the benefits….Further, it is not the government financing this project - utility investors will initially be providing capital and experience tells us that 3.087% would never be accepted by them. Instead it is ratepayers, who are the intended beneficiaries and will be paying for AMI with higher bills for several years. In the Commission's view, the cost-benefit analysis should consider the ratepayers' view of costs and benefits and, thus, use a discount rate that reflects the ratepayers' perspective. From this perspective, the Commission is not convinced that 3.087% reflects a reasonable estimate of ratepayers' cost of capital or their discount rate.

ICC Docket No. 12-0298, Order of June 22, 2012 at 39 ("ComEd AMI Plan Order").

Just as in ComEd's case, Ameren proposes the use of a discount rate based on the U.S. Government's Treasury Bill rate – Ameren's being the latest 20-year bond rate. The Commission's decision in the ComEd AMI Plan docket supports rejection of Ameren's selected discount rate. Removing the societal and customer benefits (discussed below and in the People's Initial Brief), and adjusting the discount rate as the People recommend, renders Ameren's AMI Plan not cost beneficial and the Commission should reject it.

c. **Ameren Overstates the Societal and Customer Benefits Associated With Its Plan.**

Ameren argues that "[e]ven if "a large portion" of projected societal benefits were removed and a discount rate of 7% is applied, the plan still yields a positive result." AIC Initial Brief at 2. However, as argued in the People's Initial Brief, the "large portion" that Ameren suggested removing from its base case still results in a gross overstatement of these benefits in its Plan. Ameren claims that the People's assumptions are "extreme" and implies that such extreme results are necessary in order to drive its Plan below the threshold at which it will be cost beneficial. However, as explained in the People's Initial Brief (see AG Initial Brief at 16, 18, 21), and as argued below, the assumptions that Mr. Hornby relied upon are reasonable.

Removing these benefits from consideration will render the Plan not cost-beneficial, and the Commission should reject it.

Ameren contends that the People "explicitly acknowledge that implementation of the revised Plan would meet the statutory definition of cost beneficial, even as they *speculate* that some projected benefits may be overstated." (Emphasis added.) AIC Initial Brief at 11. Ameren seeks to downplay the importance of this issue, referring to the reasonableness of its projections as "a red herring" (AIC Initial Brief at 10) and noting that the Commission should approve its Plan simply because it "quantified" these benefits (*Id.* at 9). The arguments presented in the People's Initial Brief demonstrate that the overstatement of customer and societal benefits, in particular those related to demand response ("DR") and Plug-in Electric Vehicles ("PEV"), are not speculative, but are very real. See AG Initial Brief at 10, 12, 17.

Ameren's proposed Plan yields projected operational benefits with a present value of $400.9 million, or roughly 86% of the projected costs of the AMI Plan. AG Initial Brief at 5; AIC Ex. 3.1, Figure 2. As Ameren aptly notes, the People did not raise issue with the projected operational benefits. However, Ameren's projected operational benefits alone are insufficient to justify the AMI Plan. This is where Ameren's projected societal and customer benefits become critical in determining whether this Plan is cost-beneficial.

As argued extensively in the People's Initial Brief, Ameren projects a present value of $254.8 million in customer benefits, largely from savings derived from anticipated reductions in the load of customers who elect to take service under future AMI-enabled pricing options.[4] AG Initial Brief at 9-17; AG Ex. 1.7RH. However, Ameren bases these projected customer benefits on a highly speculative assumption that Ameren will avoid generation capacity costs. AG Initial

[4] These pricing options include Ameren's already-existing Power Smart Pricing program (PSP), a new Critical Peak Pricing (CPP) program, a new Peak Time Rebate (PTR) program, and a Direct Load Control (DLC) program. AIC Ex. 5.0RH at 8-9.

Brief at 9. In order for these benefits to be realized, several factors outside of Ameren's control must simultaneously align: the Midwest Independent System Operator (MISO) must approve such a plan (see AG Initial Brief at 11-13); customers must want to participate[5] (see Initial Brief at 14-16; and third-party providers must develop the pricing programs (see AG Initial Brief at 16-17); . AG Initial Brief at 9-10; AG Ex. 4.0RH at 4. If these and other speculative assumptions discussed in the People's Initial Brief (see AG Initial Brief at 8, 11, 17), are removed, and the discount rate is adjusted to an appropriate level, Ameren's plan ceases to be cost-beneficial.

Simply put, the record does not support Ameren's projections on these benefits and this issue is far from a "red herring" as Ameren would have the Commission believe. As noted in the People's Initial Brief, Ameren provided little, if any, support for its projections of customer participation in the various pricing options. AG Initial Brief at 16, See AG Cross Exhibit 5; AG Cross Exhibit 6. The People presented an analysis of numerous utilities nationwide and found residential participation levels are far less than Ameren projects, typically about half less. AG Initial Brief at 14-15; AG Ex. 1.4RH. Indeed, Ameren's own experience running its Power Smart Pricing program (PSP) has yielded far lower participation rates than it projected in its Plan. AG Initial Brief at 14; AG Cross Exhibit 1. Secondly, both Commission Staff and the People discussed the difficulties in motivating residential customers to voluntarily participate, or "opt-in", to these pricing options because the financial incentive for a customer to participate is low, and, it is correspondingly difficult to get customers' attention. AG Initial Brief at 16; Staff Ex. 5.0 at 7.

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[5] In order to derive some benefit from similar customer programs, a yet-to-be-determined number of customers on largely still undetermined alternative pricing programs must reduce the amount of energy they use during approximately only 60 hours per year when the system experiences peak usage times. Discussed in greater detail at AG Initial Brief at 12-16.

In addition, Staff witness David Brightwell cautioned the Commission to be "wary" of such programs (Staff Ex. 5.0 at 7) and the People presented an analysis that showed the financial incentive to customers equated to less than $4 per month. AG Initial Brief at 16. Mr. Brightwell also noted that a study of Ameren's PSP pilot found that customers' overall energy usage actually *increased* when participating in PSP. *Id.*; Staff Ex. 5.0 at 5-6. Both Staff and the People raised issues as well with the analysis of Ameren's expert witness, Dr. Faruqui, who "ignored" unfavorable results from currently running DR pilots. *Id.*; Staff Ex. 5.0 at 7. Ameren's projections also did not account for considerable variations in monthly energy use and peak demand for residential customers, and even using "optimistic" participation rates as discussed by Mr. Hornby, the levels of peak reduction would be half of those used by Ameren in its base case. *Id.*; AG Ex. 1.0RH at 26.

Finally, the People presented the problems associated with Ameren's almost-exclusive reliance on third-party providers to provide Demand Response programs. Comverge witness Frank Lacey stated that "there's an economic problem" with third-party suppliers providing PTR, CPP, and DLC programs, and that for residential customers, "it doesn't really work." AG Initial Brief at 17; Tr. at 211. Nevertheless, Ameren goes on to overstate the ability or desire of these providers to offer programs in Ameren territory, and then relies on the presumed benefits that will fall to participants for purposes of its cost-beneficial analysis.

Ameren also projects $96.4 million in societal benefits (AG Ex. 1.7RH at 2), which consist primarily of savings in gasoline and carbon emission costs. AG Initial Brief at 5. However, in order for these projected benefits to occur, Ameren assumes that an AMI-enabled time-of-use (TOU) pricing program will be made available, and that the availability of that pricing program will cause some residential customers to purchase PEVs. AG Ex. 1.0RH at 5.

The majority of reductions to carbon emissions will come from Ameren customers reducing their annual usage as a result of receiving service under one of the various alternative pricing options to be enabled by the AMI Plan, according to AIC. Again, removing these assumptions significantly reduces the benefits, and the Plan is much less likely to be cost-beneficial. AG Initial Brief at 5-6.

Ameren also overstates the $90.1 million projected financial benefits of AMI as it relates to the adoption and usage of PEV's by Ameren's ratepayers. As discussed in greater length in the People's Initial Brief, the record evidence shows that the benefits associated with PEV adoption could be realized absent the implementation of AMI, rendering these benefits useless in determining whether an AMI plan is cost-beneficial. *Id.* at 17-19. Specifically, Ameren assumes that 0.7% of vehicles among Ameren customers with AMI are PEVs that were purchased solely because of the AMI and time-of-use rates available to reduce the operating costs of PEVS. *Id.* at 17; AIC Ex. 8.1RH at 31. The associated estimates of incremental benefits clearly rely upon unreasonable assumptions. AG Initial Brief at 19; AG Ex. 1.6RH. Finally, as noted in the People's Initial Brief, Commission Staff Witness Eric Schlaf testified about the debatable nature of these PEV benefits, raising issue with the "long chain of reasoning and calculations" used by Dr. Faruqui and the difficulty in forecasting a number of the numbers that Dr. Faruqui relied upon. AG Initial Brief at 18-19; Staff Ex. 4.0 at 5.

Moreover, Ameren mischaracterizes the record evidence in its brief when it argues that Mr. Hornby "acknowledges that, even if projected societal benefits are reduced under his analysis, the Plan still has a benefit to cost ratio over 1.0" and that "even if one disagrees with the reasonableness of the assumptions used, confirms AIC's overall conclusion: implementation of the revised Plan will be cost-beneficial." AIC Initial Brief at 11. These statements are taken out of context and only serve to detract from the seriousness of the ratepayer investment that Ameren is asking the Commission to approve. In fact, the testimony that Ameren references in making these assertions relates to Mr. Hornby running multiple scenarios, including the Total Resources Cost test that Ameren exclusively relies upon to demonstrate that its plan is cost-beneficial. As argued above, this is only one test out five that the ISSGC recommended be reviewed. Mr. Hornby ran other scenarios, including Societal Costs Test and the Total Resources Cost Test that resulted in Ameren's Plan being not cost-beneficial. See AG Ex. 1.0RH at 28.

Based upon the foregoing, the Commission should not view the assumptions taken into consideration in the People's analysis as "extreme," "unreasonable," or "fanciful" as Ameren suggests, but rather as reasonable and thoughtful considerations that, when taken in conjunction with a more appropriate discount rate, confirm Mr. Hornby's conclusion that Ameren's Plan is not cost-beneficial. The record evidence and the requirements of Section 16-108.6 of the Act support rejection of Ameren's Plan as presented.

III. ALTERNATIVELY, THE COMMISSION SHOULD MODIFY AMEREN'S PLAN AS RECOMMENDED BY THE PEOPLE

In the event that the Commission approves Ameren's Plan as cost-beneficial, the People urge the Commission to consider modifications, as proposed in the People's Initial Brief. AG Initial Brief at 22. Ameren refers to these proposed modifications, as well as those proposed by other Intervenors as "extraneous items" that do not go to the issue of whether the Plan is cost-beneficial and urges the Commission to not adopt them. AIC Initial Brief at 3. Ameren's attitude toward the suggestions of the stakeholders here is telling, arguing to the Commission that the purpose of these proceedings is not to devise a plan that satisfies the Intervenor's "far flung agendas." *Id.* Finally, Ameren argues that it is "premature" to meet with stakeholders or devise a series of metrics. AIC Initial Brief at 19. However, this issue is not premature. Ameren is asking for the investment from ratepayers now. Illinois ratepayers should not be left holding the bag on this investment without some assurances that they will receive some benefit or protection.

a. **The Commission Should Adopt the Set of Metrics Adopted in the ComEd AMI Docket**

As argued in the People's Initial Brief, the Commission concluded, in the ComEd docket, that several modifications to the Plan presented by ComEd were necessary, "given the limited review that has been performed, the failure to consider societal costs, and most importantly the failure to adopt a strategy that ensures ratepayers can immediately use and benefit from the Smart Grid functions of AMI meters…". ICC Docket No. 12-0298, Order of May 24, 2012 at 40. The People reiterate the necessity of incorporating these same modifications in any Plan approved for Ameren in this rehearing.

First, as noted in the People's Initial Brief, the Commission should adopt a set of metrics that would mirror those adopted in the ComEd docket and would include:

(1) Bill impacts associated with the costs for deployment of smart grid modernizationand AMI investments for low, average, and higher usage level customers pursuant to approved rates and surcharges;

(2) Participation levels by such customer groups in the Company's web portal and the results of such participation on customer usage;

(3) Participation levels by such customer groups in the Company's future PTR program;

(4) Participation levels by such customer groups in the hourly pricing program; and

(5) Key indicia associated with credit and collection activities targeted to these customers, such as deposit requirements, disconnection notices, and disconnections for nonpayment.

AG Initial Brief at 23-24.

As noted by the Commission in the ComEd AMI Docket, there is a real possibility that AMI "could disproportionately harm certain populations because of the operational ability of ComEd to disconnect customers sooner and there is a corresponding concern that these are the very populations that will not take part in the benefits of lower bills through programs such as the PTR, RRTP, or other potential future dynamic pricing options." ICC Docket 12-0298 Order at 40. The same concerns are at issue in Ameren's service territory and the People urge the Commission to adopt the same set of metrics as those presented in the ComEd case, which were designed to ensure that no harm comes to vulnerable populations as a result of Commission approval of the installation of AMI. In addition to the very real benefits of targeting education programs to low income and other vulnerable populations, such metrics would provide statewide consistency. The Commission adopted these metrics in the ComEd Docket based, in part, on the conclusion "that this information is important and should be addressed." ComEd Order at 20. These same metrics should be incorporated into any approved Ameren AMI Plan. As argued in the Initial Brief, there simply is no reason why Ameren's plan, which, like ComEd's, places all of the investment risk on ratepayers, should not include these additional requirements. AG Initial Brief at 24.

b. **The Commission Should Require Ameren to Include in its Plan a Site Visit Prior to Disconnection.**

As argued in the People's Initial Brief, Ameren describes in its Plan is its intention to activate the remote connect/disconnect switch in the AMI meters installed over the 10-year performance metric period and assigns specific dollar benefits to fewer truck rolls related to remote connections and disconnections, including those made for nonpayment. AG Initial Brief at 26; AIC Ex. 3.1RH at §§ 3.5.1, 3.5.2. This strategy to use remote disconnection technology for nonpayment is cause for Commission concern and action.

Current Commission Rules clearly state that the utility shall attempt to advise the customer that service is being discontinued by making contact "at the time service is being discontinued." *See* 83 Ill.Admin.Code Part 280.130(d). This important requirement for an attempt at in-person notification is in addition to a requirement that if disconnection cannot be accomplished "during a call made at the customer's premise," the utility shall attempt to leave a notice "at the premise or billing address" informing the customer that disconnection was attempted and their service continues to be subject to disconnection. *Id*. As argued in greater detail in the People's Initial Brief, both the General Assembly and the Commission have declared that reliable electric service is essential to the health, safety and welfare of the citizens of the State of Illinois. 220 ILCS 5/1-102, 1-102(d)(i); 83 Ill.Admin.Code Part 411.10(a)(3). In various orders, the Commission has repeatedly emphasized the value it places on retaining a site visit and customer contact at the time of disconnections for nonpayment. *See* ICC Docket No. Docket No. 09-0263, Docket No. 12-0089, Docket No. 12-0298. In particular, in ComEd's AMI Plan Docket, the Commission concluded, ComEd still be required to perform a site visit prior to termination for non-payments, noting that:

> The Commission wishes to make clear that in cases of disconnection for non-payment regardless of the technical capabilities of a meter, the on-site contact and premises visit shall be retained, given the existing language of Section 280.130(d). The Commission continues to believe that Section 280.130(d) is an important consumer protection that can prevent dangerous health and safety conditions due to the loss of essential electricity service.

ICC Docket No. 12-0298, Order at 61-62.

Accordingly, given the current Part 280 requirement and recent Commission rulings acknowledging the importance of that rule, the People urge the Commission to look past Ameren's assertions that this important safety issue is an "extraneous" issue and require Ameren to include a site visit prior to disconnection.

IV. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that the Commission enter an order consistent with the recommendations made in this Brief and the People's Initial Brief.

Respectfully submitted,

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